

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** John Jernigan, Amherst Towing, c/o David Keenan

**Date application filed with the Town Clerk:** November 28, 2007

**Nature of request:** A Special Permit to renew the expired Special Permit ZBA FY96-0021 to continue a towing and wrecking operation, the sale of cars obtained in connection with the towing business, the sale of new and used auto parts, automotive repairs and body work, and salvage operations

**Address:** 100 Sunderland Road (Map 5A, Parcel 138, COM/FPC/R-N Zoning Districts)

**Legal notice:** Published on December 5 and 12, 2007 in the Daily Hampshire Gazette and sent to abutters on December 4, 2007

**Board members:** Thomas Simpson, Barbara Ford and Jane Ashby

**Submissions:** The petitioner submitted a revised Management Plan with the application.

Town staff submitted the following:

- Previous Special Permits ZBA FY96-0021 and FY90-11, plus the Management plan for Special Permit FY96-0021;
- Town GIS maps of the parcel, showing the Mill River, the Flood Prone Conservancy (FPC) district, aerial views of the vehicle parking, buildings and trailers, etc.
- A letter from the Town Engineer Jason Skills, with five (5) recommendations concerning the proposal, dated December 11, 2007;
- An email from the Conservation Director asking for time to review the wetlands and riverfront issues on the property, dated January 20, 2008;
- A letter from the ZBA Chair to the applicant stating that the hearing may not be continued for a third time without testimony, dated January 30, 2008;
- A memo from the Town Wetlands Administrator Stephanie Ciccarello commenting on when the Conservation Commission should get involved in the application, dated February 20, 2008;
- A memo from the zoning assistant outlining the Previous Special Permits and commenting on the application, dated February 21, 2008;
- An email from the Town Sanitarian dated 2/28/08 commenting on the application;
- A memo from the Town Engineer commenting on the drainage conditions and requirements of the property, dated March 6, 2008.

**Site Visit:** January 22, 2008

The Board met at the site with David Keenan, who is representing the petitioner. They observed the following:

- A large lot, fenced on three sides, with about 100 vehicles stored both inside the fenced area and in the northern portion of the lot;

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- The section of the fenced area where cars for sale are stored;
- The large building with a drainage system to capture spilled fluids where repairs are made;
- The office and storage room for vehicle parts;
- The parking area outside the office for employees and customers;
- The parking area between the building and Sunderland Road where the tow trucks and other vehicles related to the business are kept;
- The picket fence along Sunderland Road, in need of some repairs;
- The dumpster inside the fenced area, partially screen by the fence;
- Commercial businesses to the south and east, open farmland to the north and the Mill River and wetlands to the west and north.

### **Public Hearing:** December 20, 2007 and January 24, 2008

Mr. Keenan, representative of the petitioner, was not prepared to present the case on December 20, 2007 and requested that the hearing be continued until January 24, 2008. The hearing was not opened, nor was testimony taken at that time.

On January 24, 2008, Mr. Keenan was present prior to the hearing, but abruptly left before the hearing was opened. When the case came forward on the agenda, the Board discussed whether to continue the hearing once again or open the hearing and deny the application for lack of information. Mr. Simpson noted that the Special Permit expired ten years ago and a renewal of the permit is required.

The Board decided to write a letter to the applicant under the ZBA Chair's signature stating that the Board will not continue the hearing again without taking testimony unless there are valid reasons for doing so. The letter will also warn the applicant that, without a valid Special Permit and/or being in violation of any conditions of the expired permit, he may be subject to enforcement action(s) at any time.

Ms. Ashby stated that she would like another site visit as well. With all the snow for the January site visit, there was much that the Board couldn't see, particularly near the river front.

Mr. Simpson made a motion to continue the hearing until March 6, 2008 at 7:30 PM. Ms. Ford seconded the motion and the vote was unanimous to continue the hearing on March 6, 2008, at 7:30 PM.

### **Continued Public Hearing** March 6, 2008

David Keenan spoke to the application at the hearing. He first apologized for leaving before the hearing started on January 24<sup>th</sup>, but he did say that productive things had happened since that time. Mr. Keenan gave the following testimony:

- Mr. Jernigan would like to renew the Special Permit for his towing business that expired 10 years ago; Mr. Keenan represented the applicant at that time as well;
- Mr. Jernigan is not looking to expand his business any more;
- There will no longer be any new sales of auto parts, but the other activities listed on the application (towing, wrecking, sale of cars from the towing, automotive repairs, body work and salvage) will continue;
- He's asking that the conditions of the previous Special Permit are repeated for this permit.

Mr. Keenan met with the Town Engineer, Jason Skeels. They visited the site together and came to the following conclusions;

- Given the new regulations for drainage and wetlands, there are complex problems that need to be solved co-operatively with the Town and other properties nearby;
- Mr. Skeels and Mr. Keenan located the catch basins on the property and surrounds, but could not find the outfall from the storm drains;

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- The outfall should be an 8" pipe that incorporates some type of stormwater treatment that meets the current standards;
- Right now the catch basins seem to discharge into the buffer zone for the Mill River;
- There are inadequate catch basins along Sunderland Road; currently runoff from two businesses across the road, Pro-Sensing and Watroba's, feed into the catch basin on Jernigan's property;
- Stormwater also flows down Sunderland Road, crosses the road and goes down Jernigan's driveway;
- There is a berm across the front of Jernigan's driveway to keep the runoff out, but it flows over the top of the berm; raising the berm would cause damage to the underneath of vehicles enter the site;
- There is too much for Jernigan's catch basin, so the stormwater travels across the ground and into the Mill River; oil and dirt from the site are thus carried into the river.

Mr. Simpson asked that Mr. Keenan describe how each of the operations of Amherst Towing fit into the business as a whole.

1. Towing – They mostly tow cars that have been left on the street or apartment parking lots during a snowstorm for example, or that have been abandoned, but towing at the University is much reduced now. They used to deal with 200-300 cars at a time. There are 5-6 tow trucks, 2 ramp trucks, 2 salvage trucks and 1 large flat bed truck that are used for towing. The trucks are stored in the front of the building or behind the gate.
2. Garage repairs – If in a wreck, vehicles are towed to the garage for repairs or scrap. The garage can store up to 4-5 vehicles.
3. Sales – Often cars are abandoned, and cars that are sellable are kept near the office building for sale. Cameras film the tow area near the office. Mr. Jernigan used to buy cars at auction, but no longer does that. Only abandoned cars are sold now, and this is not a large part of the business.
4. Salvage – Wrecked cars that cannot be repaired are stored on the north side of the property, currently outside of the fenced area. There are about 200 wrecked cars on site. Scrap is now more valuable, so this part of the operation is more important now. The crushing operation is done 2 – 3 times a year. A portable unit arrives, crushes the vehicles and carries them away on a flatbed. Each trip carries around 14-15 cars per flatbed.  
To prepare for crushing, the vehicles are stripped of fluids on the concrete pad west of the building and south of the storage trailers. Some other parts are also removed, such as the tires, wiring, catalytic converters, etc. If fluids are leaking from a wreck, the fluids are removed first, but otherwise the fluids are drained when the crusher comes.

Mr. Simpson asked about storage of parts. Mr. Keenan said that batteries, anti-freeze and tires are stored for later recycling. Sometimes transmissions and engines are re-sold. These things are stored in the trailers on site.

The Board noted that with scrap metal more valuable now, the applicant may profit from not keeping the vehicles so long on the property.

Ms. Ford asked about the number of trailers on site. There are 5 or 6 trailers presently, but the Special Permit limits the number to three trailers. Mr. Keenan said that most of the items to be recycled or re-sold are stored in the building, and the trailers are used for overflow.

Mr. Keenan said that the tow drivers are mechanics too. They repair engines, transmissions, body work and spray paint vehicles (there is no spray booth though).

Ms. Ford noted that there are cars stored all over the lot in seemingly random order. If the applicant had a parking plan with a row configuration, less space would be needed. Ms. Ford asked if Amherst Towing could be better organized. Mr. Keenan agreed that there should be numbered spots for the vehicles. Some

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junk yards are organized, he said, but more the norm is more like Jernigan's approach.

Ms. Ford noted that the Board may want to condition a parking plan for storage, and to keep vehicles out of the 100 year flood plain near the Mill River.

Ms. Ashby added that in the spring with heavy water flow and snow melt, vehicles definitely should not be parked in the 100 year flood plain. She thought perhaps such a stipulation should be made in the Management Plan, but Ms. Ford said that enforcement would be a problem. It might make more sense to never have vehicles parked there. The oil and sediments dripping from cars would flow into the river nearby.

Mr. Keenan asked what would be the minimum that needed to be done to renew the Special Permit. Moving the cars inside the fenced area might be needed, he said, and he would do some research about the drainage problems and talk to the DEP, Department of Environmental Protection. The Town would be monitoring the outflow of the drainage line within the next two years, Mr. Keenan said.

Ms. Ashby said that, now that the volume of cars is less, what would be the problem of setting up the fence so that it would be out of the flood plain. Mr. Keenan said that the surveillance lights and cameras now are pointed into that area. Ms. Ashby responded that they can be moved.

Ms. Ashby noted that is the applicant had met the conditions of the previous permit (the fencing, not storing cars in the wetlands, etc.) then he would have an easier time now.

Ms. Ashby repeated that she would like another site visit, since the snow hid things on the property, and that she was not prepared to make a decision at this time.

The Board discussed the drainage problems on the site and in the area. The Town Engineer in his memo of March 6, 2008 stated that the discharge from the drains must meet current stormwater standards, and it could be met in one of two methods. Mr. Keenan said that the second option seemed best, that Amherst Towing would grant a drainage easement to the Town for the main line that runs beneath the towing yard. Amherst Towing would still have to maintain containment units in their storm drains that would separate the oil from the water. These would have to be cleaned and inspected regularly.

Mr. Keenan addressed the oil/water separator in the repair building. He said that the oil floats on the top, gets skimmed out periodically and then burned in the heating unit inside the building. The water drains into the sanitary sewer line. Sludge is also collected – 50 gallons of sludge are collected to 20 gallons of oil.

Mr. Simpson asked about plans for finishing the inside fence. Mr. Keenan said that Mr. Jernigan does not want to finish the fence. He did say though, that without a fence along the northern part of the yard, that folks would come into the property from the north and steal auto parts.

Mr. Keenan said the Mr. Jernigan should be willing to fix the pipelines (drainage) and finish the fence along the northern section.

Mr. Keenan said that he would contact the DEP concerning their regulations, would contact the Conservation Commission about finishing the fence and would talk to the Town Engineer about the drainage easement.

Mr. Simpson made a motion to continue the hearing to 7:30 p.m. May 8, 2008. Ms. Ford seconded the motion, and the vote was unanimous to continue the hearing to 7:30 p.m. May 8, 2008.

**Site Visit II      May 7, 2008**

The Board met at the site with David Keenan, Daniel Hersey of Amherst Towing and William Sierieta, Civil

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Engineer and private contractor. They Board and they walked to the river on the other side of the yard fence and to the north beyond the fence. They observed the following:

- The Mill River, located a good distance away from the towed vehicle yard and down a bank.
- The discharge pipe from the drainage on site, upland about 30 feet from the river;
- The improved condition of the grounds, although discarded tires and vehicle parts could still be seen outside the fence and near the river;
- The lack of any standing water on the grounds;
- The cars parked in a row around the perimeter of the yard;
- The auto stripping section outside the building that is supposed to be kept free of liquids; it needed to be cleaned;
- The several trailers on site that are used for parts storage.

### **Continued Public Hearing** May 8, 2008

David Keenan spoke to the petition at the continued hearing. Daniel Hersey of Amherst Towing and William Sierieta, Civil Engineer and private consultant, assisted when needed.

Mr. Keenan reviewed the drainage problems on and off the site. He said that the petitioner will come back with a drainage plan to present to the Town.

Mr. Simpson suggested that a solution to the issue of drainage across the yard would be to put in another storm drain across Sunderland Road from the entrance to Amherst Towing. Then the storm water from Sunderland Road and the two businesses across the street wouldn't come into the yard.

Mr. Keenan said that the outside drainage issue isn't "huge" but is irritating. The Town knows that there are not enough storm drains along Sunderland Road, but are waiting until the entirety of Sunderland Road will be improved in the next few years.

Mr. Simpson asked about installing an oil separator for the drain. Mr. Keenan said that he will be filing with the DEP and a mercury/oil separator plus a pump is a requirement with the DEP.

Mr. Simpson noted that there is a 200 foot buffer for the Fort River, plus the south-west corner of the yard is in the 100-year flood plane. Mr. Keenan responded that there is no history of flooding ever from the river because of the 8-foot river bank. If ever there would be an emergency, the cars are street worthy in that area and can be moved. There are no cars without wheels placed there ever.

Mr. Simpson noted that the yard is fairly flat and the flood zone is fairly large. If there would be a 100-year storm with flooding, the water would spread out over the yard and the cars would never be covered by water.

Mr. Simpson said that the concrete pad under the crushing area needs to be cleaned. It is so dirty at present that the oil cannot be collected prior to crushing the vehicles. Mr. Keenan agreed.

The Board agreed that oil disposal plans need to be submitted to Inspection Services as soon as possible.

Mr. Simpson asked if it was realistic to condition that vehicles be stored on the site no longer than 120 days. Mr. Hersey said that, with business much decreased, they now crush every 9 months.

Mr. Simpson asked about the storage trailers. Mr. Keenan said that there are 6 trailers on site plus a small one for tires. Three of the trailers are empty at the moment. They are used for subcontractors, such as for metal, tires and sheet metal. The tanks are filled with used oil, which is then burned.

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Mr. Simpson noted that there is still a lot of auto trash along the river bank outside of the fence. Mr. Hersey responded that only half of the area had been cleaned for the second site visit. More had been done that very day.

Ms. Ford asked if the applicant wishes to store vehicles to the north of the fence. Mr. Keenan responded that they want to store vehicles all the way to the northern boundary. He thought that cars had been there since the early years of the operation.

Ms. Ashby said that the condition of not storing vehicles outside of the fenced area had been a condition of the 1989, 1990 and 1996 Special Permits. However, following the conditions of the Special Permits has not been happening at all.

Ms. Ashby said that she has not faith that the conditions of a future Special Permit will be followed. The conditions require no dumping, no fill, no storage outside the fence, etc., but all of these things have been happening.

Mr. Keenan responded that it's up to the zoning officer to enforce the conditions of a Special Permit. The charge would be a non-criminal offense for improper storage. There has never been a complaint or an enforcement order. Ms. Ashby responded that the site is being cleaned only because of the Board's site visits.

Mr. Keenan said that the business has paid taxes regularly and has performed a service to the Town for many years. The business is shrinking however, and the towing isn't as frequent as earlier. Cars are ticketed instead. Also, folks want their own wrecked cars since there is a market for the metal and parts.

Ms. Ford said that the following is needed from the applicant:

- A more detailed Management Plan;
- A plan for parking the cars that can be adhered to, including parking around the building;
- A plan for maintenance of the landscaping;
- Repair of the stockade fence along Sunderland Road;
- An analysis of the coal/fly ash that has been used for fill in the yard.

Mr. Sienita said that he would be developing a management plan, a drainage plan and an analysis of the danger of the coal ash.

Ms. Ashby wondered why it mattered what was put in the conditions of a permit since the applicants continuously have not adhered to the conditions. Mr. Keenan responded that the ZBA gives an applicant rights that are not normally allowed in a particular zoning district. The conditions of a Special Permit are made in order to help the zoning enforcement officer. In this case, there have been no complaints.

Mr. Keenan added that the business is much like the other businesses in the area. The Board agreed to the similar businesses concept, but disagreed in terms of how the businesses are conducted.

Ms. Ashby said that it's the applicant's responsibility to follow the conditions of a permit, not the enforcement officer. There may be few complaints because no one can see behind the fence along the road. The ZBA and enforcement officer should be able to have good faith that any permit that is issued will be followed.

Mr. Keenan suggested that a time frame be put on the Special Permit. The applicant then will know that it will be at his peril if he does not follow the permit.

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Mr. Simpson made a motion to continue the hearing to June 26<sup>th</sup> at 7:30 pm. Ms. Ford seconded the motion, and the vote was unanimous to continue the hearing to June 26, 2008 at 7:30 pm.

**Continued Public Hearing**      June 26, 2008

**Public Meeting:**

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because

10.391 – The proposal protects unique or important natural, historic or scenic features because

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

**Public Meeting – Zoning Board Decision**

For all of the reasons stated above, the Board VOTED \_\_\_\_\_ on the premises at \_\_\_\_\_ address \_\_\_\_\_, (Map \_\_\_\_\_/Parcel \_\_\_\_\_, \_\_\_\_\_ Zone), with conditions.

\_\_\_\_\_  
BOARD CHAIR

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008

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to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.



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Application No. ZBA FY2008-00017

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to \_\_\_\_\_ on the premises located at \_\_\_\_\_ address \_\_\_\_\_, (Map \_\_\_\_\_/Parcel \_\_\_\_\_, \_\_\_\_\_ Zone) as requested in the application filed by \_\_\_\_\_, subject to the following conditions:

\_\_\_\_\_  
BOARD MEMBER, Chair  
Amherst Zoning Board of Appeals

\_\_\_\_\_  
DATE